

ESTTA Tracking number: **ESTTA582281**

Filing date: **01/16/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	eBioscience, Inc.		
Entity	Corporation	Citizenship	California
Address	10255 Science Center Drive San Diego, CA 92121 UNITED STATES		

Attorney information	Gabrielle S. Roth Sughrue Mion, PLLC 2100 Pennsylvania Avenue, NW Washington, DC 20037-3213 UNITED STATES groth@sughrue.com, tm@sughrue.com, kdunmire@sughrue.com Phone:202-663-7471
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Applicant Information

Application No	86033693	Publication date	12/31/2013
Opposition Filing Date	01/16/2014	Opposition Period Ends	01/30/2014
Applicant	Tonbo Biotechnologies Corporation 4940 Carroll Canyon Road Ste 105-B San Diego, CA 921211735 GERMANY		

Goods/Services Affected by Opposition

Class 001. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Biochemical reagents used for non-medical purposes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PCH101		
Goods/Services	monoclonal antibodies for research and scientific purposes		

Attachments	Notice of Opposition D5850276.pdf(146851 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gabrielle S. Roth/
Name	Gabrielle S. Roth
Date	01/16/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/033,693
published in the Official Gazette of December 31, 2013

eBioscience, Inc.)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
Tonbo Biotechnologies Corporation DBA)	
Tonbo Biosciences)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, eBioscience, Inc., a California corporation with its principal place of business at 10255 Science Center Drive, San Diego, California 92121, believes it will be damaged by the issuance of the registration of the PCH101 mark shown in Application Serial No. 86/033,693 to Applicant (the '693 Application) and published on December 31, 2013, and hereby opposes the same.

The grounds for the opposition are as follows:

1. Prior to the August 9, 2013 filing date of the '693 Application, Opposer adopted, used, and still uses the mark PCH101 for monoclonal antibodies for research and scientific purposes ("Opposer's Goods").
2. Opposer is the exclusive owner of the PCH101 mark for Opposer's Goods and has, since at least as early as May 2005, continuously used the PCH101 mark for Opposer's

Goods in commerce. Opposer owns common law rights in the PCH101 mark and has not abandoned that mark. Opposer's use in commerce of the PCH101 mark for Opposer's Goods since May 2005 is long prior to the filing date of the '693 Application.

3. By virtue of Opposer's use of the PCH101 mark for Opposer's Goods, the PCH101 mark has become an indication of origin in Opposer and, consequently, Opposer has established valuable goodwill and common law rights in this mark.

4. Opposer's PCH101 mark is inherently distinctive.

LIKELIHOOD OF CONFUSION

5. Opposer's PCH101 mark and Applicant's PCH101 mark are identical.

6. Opposer's Goods and the goods identified in the '693 Application are virtually identical, are offered in the same channels of trade and are targeted to the same types of purchasers.

7. Opposer and Applicant are competitors in the marketplace.

8. The PCH101 mark, if used in connection with the goods identified in the '693 Application, so resembles Opposer's PCH101 mark for Opposer's Goods, as to be likely to cause customers, prospective customers, and others to be confused, mistaken, or deceived into believing, contrary to fact, that the goods identified in the '693 Application offered in connection with the PCH101 mark emanate from, or are in some way sponsored, licensed or approved by Opposer, thereby damaging Opposer.

9. Applicant is not lawfully entitled to the registration that it seeks because the PCH101 mark, if used in connection with the goods identified in the '693 Application, so resembles Opposer's PCH101 mark for Opposer's Goods as to be likely to cause confusion, to cause mistake, or to deceive within the meaning of 15 U.S.C. § 1125(a) of the Trademark Act of 1946, thereby damaging Opposer.

FRAUD

10. Upon information and belief, prior to filing the '693 Application, Applicant knew that Opposer had used, and was still using, the PCH101 mark in commerce for Opposer's Goods.

11. Christopher W. Clarke, acting on behalf of Applicant, declared in the '693 Application that "to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or to cause mistake, or to deceive." Upon information and belief, this sworn statement in the '693 Application was false because Applicant knew that Opposer had the superior right to use, and was using, the identical mark PCH101 in commerce for goods that are virtually identical to the goods included in the '693 Application.

12. Upon information and belief, said false statement was made by Christopher W. Clarke, as an authorized representative of Applicant, with Applicant's knowledge that said statement was false.

13. Upon information and belief, said false statement was made by Applicant with the intent to deceive and induce the PTO to accept the '693 Application, and, reasonably relying

upon the false statement, the PTO did, in fact, accept the '693 Application. The false statement made in the '693 Application was material to the acceptance of thereof.

14. Opposer was damaged by said false statement and registration of the '693 Application should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of the PCH101 mark by Applicant be refused.

eBioscience, Inc.

Dated: 1/16/2014

By: Gabrielle S. Roth
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was served upon the Applicant by mailing via first class mail, United States Postal Service, postage prepaid, this 16th day of January, 2014.

Christopher Clarke
Tonbo Biotechnologies Corporation DBA Tonbo Biosciences
4940 Carroll Canyon Road Ste 105-B
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chris.clarke@tonbobiotech.com

Kimberly A. Dunmore